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# **In the Supreme Court**

**OF THE  
United States**

**OCTOBER TERM 1972**

**No. 72-6520**

**KINNEY KINMON LAU, a Minor by and through  
MRS. KAM WAI LAU, his Guardian ad Litem,  
et al., Petitioners,**

**VS.**

**ALAN H. NICHOLS, et al., Respondents.**

**On Writ of Certiorari to the United States Court of Appeals  
for the Ninth Circuit**

**BRIEF OF EFRAIN TOSTADO, ET AL.,  
AS AMICI CURIAE**

## **INTEREST OF THE AMICI CURIAE**

*Amici* are California children who speak and understand only Spanish. They are compelled by California law to attend school<sup>1</sup> and need an education to

<sup>1</sup>Cal. Educ. Code §12101 (West 1969).

succeed in life. The classes they attend are conducted in English. As a result, although they sit for six hours a day in a school room, they are receiving no education. In an attempt to remedy this situation, *amici* have filed an action on behalf of themselves and others similarly situated, in the California Superior Court for Sacramento County,<sup>2</sup> in which they seek an order compelling the State of California and certain named school districts to provide them with an education. The Constitutional and Civil Rights Act questions presently before this Court in *Lau v. Nichols* are raised in the State Court action. Because the outcome of this case may have a substantial impact on the outcome of the case filed by *amici*, the interest of *amici* is self-evident.

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**THE ISSUES TO BE COVERED IN THE  
BRIEF BY AMICI CURIAE**

*Amici* have been advised that the legal issues involved herein will be exhaustively argued in the brief of Petitioners in *Lau v. Nichols* and in other *amicus curiae* briefs being filed. For this reason, *amici* herein will not burden the Court with a repetitive discussion on these arguments. Rather, *amici* file this brief to apprise the Court of the large number of Spanish speaking children<sup>3</sup> in California who, because they

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<sup>2</sup>*Tostado v. State Board of Education*, Civil No. 236988 (Cal. Superior Court for Sacramento County, filed July 23, 1973).

<sup>3</sup>The term "Spanish speaking" as used herein refers to those whose only language is Spanish. Most of these children are of Mexican ancestry.

cannot speak English, are not receiving an education, and, of the grave consequences resulting from their inability to obtain an education.

## ARGUMENT

### I.

#### DENIAL OF AN EDUCATION TO SPANISH SPEAKING CHILDREN IS AN EXTREMELY WIDESPREAD PRACTICE IN CALIFORNIA

Approximately four and one half million children attend school in the State of California.<sup>4</sup> Sixteen percent, or approximately 725,000 of these children are Spanish surnamed children.<sup>5</sup> Approximately eleven percent, or 80,000 of these children do not speak or understand English.<sup>6</sup> The Los Angeles City Unified School District, alone, has in attendance 16,187 Spanish speaking children who do not speak English.<sup>7</sup>

<sup>4</sup>CAL. DEPT. OF EDUCATION REPORT, RACIAL AND ETHNIC DISTRIBUTION OF PUPILS IN CALIFORNIA PUBLIC SCHOOLS, Fall, 1971. app. Table I (1972).

<sup>5</sup>*Id.*

<sup>6</sup>This figure was obtained from reports submitted to the California Department of Education by school districts, pursuant to a legislatively required language census. Not all districts have reported, so the exact number of monolingual Spanish speaking students is not obtainable. However, a sample of 375 of the State's 1,054 districts showed attendance of 27,885 Spanish speaking children who do not speak English. At this rate, one could expect the number to be approximately 80,000 statewide. Dr. Gilbert Martinez, Director of the State Department of Education Task Force on Bilingual and Bicultural Education, indicates that this is an extremely conservative estimate. He has indicated that there are thirty to thirty-five thousand monolingual Spanish speaking children of migrant farm-workers alone.

<sup>7</sup>Language Census Survey Report of the Los Angeles Unified School District on file with the California Department of Education.

*Amici* recognize that not all of these children are being denied an education. A few districts are providing Spanish speaking children with an excellent education. For example, for the fiscal year 1969, 5,680 students were enrolled in bilingual programs financed under Title VII of the Elementary and Secondary Education Act.<sup>8</sup> However, numerous Spanish speaking students receive no education. While approximately eleven percent of the Spanish surnamed students in California do not speak English, only 5.2 percent of these children receive any "English as a second language" instruction.<sup>9</sup> Since the education, or lack thereof, being provided to *amici* herein is representative of that being provided to Spanish speaking children in most California school districts, a review of their situations is enlightening.

Efrain, Antonio and Alonzo Tostado are Mexican American children, aged 13, 11, and 8, respectively. They live and attend school in Salida, California. They speak only Spanish and cannot read, write, or understand English. Efrain Tostado is now in the seventh grade. He attends classes in mathematics, history, science, spelling, and physical education. However, none of his teachers is able to speak Spanish. There are no bilingual aides to help Efrain understand what is being taught. Efrain is unable to follow what goes on in the classes. He cannot understand what the teachers or the other students say

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<sup>8</sup>U.S. CIVIL RIGHTS COMM'N REPORT, THE EXCLUDED STUDENT, p. 23 (1972).

<sup>9</sup>*Id.* at p. 26.



during the class. The teachers do not give him assignments or homework. They do not call on him. They do not help him.

Efrain has been given some books written in Spanish to read during class. These books are not the same as those used by the other students, i.e. they are not translations of assigned textbooks. Rather, they are just some books in Spanish which the school happened to have around. Efrain reads from these books to the best of his ability, but he does not know many of the words even in Spanish and does not fully understand what he reads. No one supervises any of this reading. He is not given specific assignments in connection with these books. On occasion, Efrain has on his own initiative tried to write papers about what he reads. Since the papers are written in Spanish and since no one on the faculty of Salida Elementary School can read Spanish, these papers have been returned to Efrain without comment.

The only attempt to include Efrain in the educational process is trivial and ineffective. Twice each week, for half an hour, Efrain is pulled out of a regular class and taken to the nurse's room with some other children. The children are given headphones and hear words in English. They try to repeat these words. Efrain does not know the meaning of the words he hears and does not know whether he is repeating them correctly.

Efrain is eager to learn. Before moving to Salida, he lived for four weeks in Santa Barbara, California. While in school there, he enthusiastically participated



in a bilingual program, with classes conducted in both English and Spanish. Efrain, himself, describes the school in Santa Barbara as a place where he understood what was going on and felt he was learning. In Salida, however, Efrain's schooling amounts to no more than his physical presence in the classroom. The school has no program of instruction which is in any way directed toward Efrain's special needs, and he is wholly excluded from the regular program of instruction.

Efrain's brother, Antonio, is in the fifth grade at Salida Elementary School. His teacher cannot speak or understand Spanish, and there are no bilingual aides to help Antonio with the work. As a result, Antonio does not even know what subjects are being taught in the classroom in which he sits. Sometimes the teacher dictates words in English, and the children write down the words as they hear them. Antonio does not understand what he is writing. His papers are always marked wrong, but he is not told how to do them correctly. Other students are given homework assignments, but Antonio is not. As with Efrain, Antonio is physically present at a school but is effectively excluded from participating in the regular program and receives no special help.

Alonzo Tostado is in the second grade at Salida Elementary School. He has always liked school and is eager to learn. In schools he previously attended in Mexico and in Santa Barbara, Alonzo participated in class and learned readily. In Salida Elementary School, Alonzo goes to class, but he cannot partici-

pate and does not learn. His teacher cannot speak Spanish. There are no bilingual aides. Alonzo hears the teacher talk to other children, but does not know what is being said. He tries to copy what other students do, but he finds this frustrating since he does not know what he is doing. The schools only attempt to help Alonzo is to provide him for half an hour each morning with a "tutor"—a boy from the seventh grade. This boy, however, speaks no Spanish and is unable to help Alonzo in any way.

The Salida Union School District consists of a single elementary school with students in grades kindergarten through eighth. The school has a current enrollment of approximately 533 students of whom 28.5 percent, or 152, are Spanish surnamed. The mother tongue of nearly all these students is Spanish. While some of these students are able to function in the English language, many speak little or no English. Not one teacher in the school speaks Spanish. The school has one receptionist. She does not speak Spanish. The school employs four Title I aides, none of whom speak Spanish. The school does not have a bilingual program, and does not provide any program of English as a Second Language for the Mexican American students who have difficulty speaking and understanding English.

Manuel Garcia is eight years old. He attends school in the Riverbank Elementary School District. He neither speaks nor understands English. His teacher speaks no Spanish. Manuel attends school for approximately five hours a day or 25 hours a week. The only

educational benefit he obtains from these 25 hours consist of thrice-weekly half hour classes with a bilingual aide. However, these classes do not parallel the normal course of study, and, no real attempt is made to assist Manuel in the subject matter areas in which the other students are instructed during the regular class. Rather, the aide reads the children stories in English and Spanish and sometimes has them play games. For the remaining  $23\frac{1}{2}$  hours each week, Manuel sits in a classroom, unable to understand what his teacher is saying and unable to ask questions. As a result, he has fallen further and further behind in mathematics, reading, spelling, writing and other subjects he should be learning.

Manuel is eight years old, yet he is still in the first grade. He has been in the first grade for three years now. Having Manuel Garcia sit day after day in a first grade classroom may satisfy the State truancy laws but it does not provide him with any education.

The Riverbank Elementary School District has 1,295 students, 31% of which are Mexican American. The mother tongue of most of these children is Spanish. The District's sole attempt to provide any instruction in English as a second language, is through a Public Employment Program non-certificated bilingual aide who is there to help 35 children. This is the individual who provides Manuel Garcia with his thrice-weekly bilingual instruction. The funds for this aide are provided through Title VI of the Economic Opportunity Act, and expired at the end of the last

fiscal year. As a result, even this meager effort will no longer occur next school year.

Arturo Alcala is five years old. He lives in Windsor, California. He speaks no English. In January, 1973, his mother and a Sonoma County social worker attempted to enroll him in kindergarten in the Windsor Union Elementary School District. They were advised by the District personnel that, because he does not speak English, the school was unable to provide him with the instruction he needed and that they would not enroll him in kindergarten.

Arturo will try again this fall to attend school in Windsor. However, since the district provides no bilingual or English as a second language instruction, he will sit in a class but will not receive an education.

The Windsor Union Elementary School District has 790 students; 36 percent have Spanish surnames. The mother tongue of most of these children is Spanish, the only provision the district makes for educating non-English speaking children is through bilingual teacher's aides. However, because of the great need and the few bilingual aides employed, non-English speaking children receive only about 20 minutes a day help from an aide. The children spend the remainder of the day sitting in a classroom but not understanding what is going on.

The lack of education being provided to *amici* herein, unfortunately appears to be the rule rather than the exception in California. The result is that

thousands of Spanish speaking children are mandated to attend school, but are not being provided with an education.

In *San Antonio Independent School District v. Rodriguez*, 41 U.S.L.W. 4407, 4416 (1973), this Court reiterated the often expressed view that "education is perhaps the most important function of state and local government." In upholding the Texas school financing system, the Court stressed that it was not faced with a situation wherein a group of persons "sustained absolute deprivation of a meaningful opportunity to enjoy . . . [a desired] benefit." With the Chinese children in *Lau*, and the Spanish speaking children in *Tostado*, the Court is faced with an absolute deprivation. As Judge Hufstедler said in her dissent to the rejection of a motion for *en banc* consideration of *Lau v. Nichols*, \_\_\_ F.2d \_\_\_ (9th Cir. Civil No. 26,155, June 18, 1973): "Access to education offered by the public schools is completely foreclosed to these children who cannot comprehend any of it."

## II.

### DENIAL OF AN EDUCATION TO SPANISH SPEAKING CHILDREN CAUSES SERIOUS ECONOMIC AND SOCIAL HARM

#### A. There is a Close Correlation Between Educational Level, Income, and Receipt of Public Assistance.

This Court, in *Brown v. Board of Education*, 347 U.S. 483, 493 (1954) stated that "... it is doubtful that any child may reasonably be expected to succeed

in life if he is denied the opportunity of an education." In the very recent *San Antonio* case, the Court reiterated this view, stating that it "had lost none of its vitality with the passage of time." *San Antonio Independent School District v. Rodriguez*, 41 U.S.L.W. 4407, 4416 (1973). The United States Census data concerning the identity of welfare recipients and those living below the poverty level, confirms the validity of the Court's statement. The close correlation between education obtained and receipt of welfare, poverty and income levels is demonstrated in Table I.

TABLE I  
EDUCATION AND ECONOMIC CHARACTERISTICS FOR  
PLACES IN CALIFORNIA WITH POPULATION  
OF 10,000 TO 50,000

Place	Median School Years Completed by Males Over 25 Years of Age	Percentage of Families Re- ceiving Public Assistance	Percentage of Families Living Below the Poverty Level	Median Family Income
Los Altos	16.0	2.1%	3.0%	\$18,208
Moraga	16.4	1.0%	3.6%	19,615
Palos Verdes	16.6	1.4%	0.7%	23,760
Chino	12.0	7.7%	8.3%	10,356
Fontana	12.0	8.7%	9.4%	9,757
W. Sac.	12.0	9.4%	10.8%	9,406
Calverico	8.6	17.1%	25.2%	6,869
Delano	9.0	17.0%	14.5%	7,138
Sanger	8.9	16.2%	16.1%	7,158

<sup>10</sup>U.S. DEPT. OF COMMERCE REPORT, UNITED STATES CENSUS OF POPULATION 1970, GENERAL SOCIAL AND ECONOMIC CHARACTERISTICS, CALIFORNIA, Table 103 (1972).

<sup>11</sup>*Id.* at Table 107.

<sup>12</sup>*Id.*

<sup>13</sup>*Id.*



It is clear from Table I that, on the average, the more education a person obtains, the greater will be his income. It is likewise clear that the less education a person obtains, the greater will be the likelihood that his family will be living below the poverty level and that he will have to rely upon public assistance to provide for his family. Because the ability to obtain such basic necessities as housing, clothing, and food is dependent upon education, education becomes the key to not only one's standard of living but to survival itself. In addition to the economic harm resulting from lack of an education, there are serious social consequences. As this Court recognized in *Brown v. Board of Education, supra*, 347 U.S. 483, 493:

Today, education is perhaps the most important function of state and local government. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment.



**B. The Spanish Surnamed Population in California Has a Significantly Lower Educational Level and Lower Income Level and a Significantly Higher Percentage of Persons Living Below the Poverty Level and Receiving Public Assistance Than the State Population at Large.**

There is no data available on the characteristics set out in Table I specifically for persons who do not speak English. However, there is abundant data on "persons of Spanish language or Spanish surname."<sup>14</sup> Since 69.3% of all Spanish surnamed persons speak Spanish as their mother tongue,<sup>15</sup> the statistics on education and income level for persons of Spanish language or Spanish surname are indicative of those factors for Spanish speaking persons. Table II shows a comparison of the educational level of persons of Spanish language or Spanish surname with total statewide population:

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<sup>14</sup>United States census data is reported for "persons of Spanish language or of Spanish surname." This includes persons of Spanish mother tongue, persons in families which the head or wife reported Spanish as his or her mother tongue and persons with a surname listed on the Immigration and Naturalization Service list of Spanish surnames. U.S. DEPT. OF COMMERCE REPORT, UNITED STATES CENSUS OF POPULATION 1970, GENERAL SOCIAL AND ECONOMIC CHARACTERISTICS, CALIFORNIA, app. A, p. App-7 (1972).

<sup>15</sup>*Id.* at Table 49.

TABLE II.  
STATEWIDE EDUCATION CHARACTERISTICS<sup>1</sup>

	Median School Years Completed for Persons 25 Years or Older	Percent of Persons 25 Years or Older Who Have Completed 4 Years of High School	Percent of Persons 25 Years or Older Who Have Completed 4 Years of College
General Population	12.4	62.6	13.4
Spanish Language or Spanish Surname	10.6	40.9	5.7

Table II shows that:

(1) Persons of Spanish language or Spanish surname obtain almost two years less education than the statewide average;

(2) The percentage of persons of Spanish language or Spanish surname who complete 4 years of high school is only two-thirds that of the statewide average; and

(3) The percentage of persons of Spanish language or Spanish surname who have completed 4 years of college is less than one-half the statewide average.

<sup>1</sup>*Id.* at Table 51.

Table III shows a comparison of the economic characteristics for the same groups:

TABLE III  
STATEWIDE ECONOMIC CHARACTERISTICS

	Percentage of 17 Families Receiving Public Assistance	Percentage of 18 Families Living Below the Poverty Level	Median Income <sup>19</sup> for Families
General Population	7.9	8.4	\$10,732
Spanish Language or Spanish Surname	13.1	14.0	8,791

It is clear from Table III that the lower education level of persons of Spanish language or Spanish surname results in lower income, greater reliance upon public assistance, and greater numbers living below the poverty level.

- C. The Disparity Between the Spanish Surnamed Population and the General Population in Education and Economic Characteristics is Not as Much the Result of a Person Having a Spanish Surname as the Result of Spanish as His Mother Tongue.

The data set out in Tables II and III become of far greater relevance to the issue before the Court when the class of persons designated "Spanish language or Spanish surname" is broken down into the sub-classes, persons whose mother tongue is Spanish and persons whose mother tongue is English. As already indicated, 69.3 percent of the "persons of Spanish language or Spanish surname" speak Span-

<sup>17</sup>*Id.* at Table 57.

<sup>18</sup>*Id.* at Table 58.

<sup>19</sup>*Id.* at Table 57.

ish as their mother tongue. By looking to specific areas within the State wherein the percentage of persons with Spanish as their mother tongue is significantly above or below this level, and comparing the education and economic data of these areas, it becomes clear that the disparities shown in Tables II and III are not as much the result of a person having a Spanish surname as they are the result of Spanish being his mother tongue.

TABLE IV  
MOTHER TONGUE, EDUCATION AND ECONOMIC CHARACTERISTICS  
OF PERSONS OF SPANISH LANGUAGE OR SPANISH SURNAME

Places with population 10,000-50,000	Percentage of persons of Spanish language or Spanish surname whose mother's tongue is Spanish	Percentage of males 25 years old and over who are High School graduates <sup>1</sup>	Median School Years completed by males 25 years old or over <sup>2</sup>	Percentage of Families receiving public assistance <sup>3</sup>	Percentage of Families with income below poverty levels <sup>4</sup>	Median annual income for families <sup>5</sup>
Palos Verdes Peninsula	5%	83%	15.2	1.1%	1.8%	\$18,103
Castro Valley	25%	52%	12.1	8.3%	3.5%	13,017
Alamo-Danville	27.5%	74%	12.6	3.6%	3.0%	18,676
San Carlos	31%	78%	12.8	4.9%	6.9%	14,057
Carmichael	37%	86%	13.0	4.8%	4.8%	12,419
Dublin	38%	78%	12.7	8.1%	6.0%	11,492
Azusa	84%	28%	9.4	11.5%	10.7%	8,419
Huntington Park	85%	34%	9.5	16.7%	14.4%	7,600
Santa Paula	86%	24%	8.5	10.6%	20.3%	7,384
Madera	87%	22%	8.2	27.3%	29.3%	5,854
Indio	87%	21%	8.4	16.9%	13.1%	7,679
Willowbrook	89%	17%	7.9	23.2%	22.7%	6,644
Brawley	91%	23%	8.0	24.1%	26.2%	6,634
Calexico	97%	29%	7.9	20.9%	30.6%	6,440

See next page for footnotes.

TABLE IV (continued)

MOTHER TONGUE, EDUCATION AND ECONOMIC CHARACTERISTICS  
OF PERSONS OF SPANISH LANGUAGE OR SPANISH SURNAME

Places with population over 50,000	Percentage of persons of Spanish language or Spanish surname whose mother tongue is Spanish <sup>20</sup>	Percentage of males 25 years old and over who are High School graduates <sup>21</sup>	Median School Years completed by males 25 years old or over <sup>22</sup>	Percentage of Families receiving public assistance <sup>23</sup>	Percentage of Families with income below poverty level <sup>24</sup>	Median annual income for families
Torrance	55%	68%	12.6	6.2%	4.9%	11,952
Lakewood	57%	59%	12.3	8.0%	5.2%	11,405
San Francisco	63%	54%	12.1	11.8%	11.8%	9,403
El Monte	78%	32%	9.9	16.6%	15.4%	8,093
Fresno	81%	26%	8.2	23.9%	29.3%	6,924
East Los Angeles	90%	24%	8.4	20.0%	18.7%	7,367

Tables II and III showed that "persons of Spanish language or Spanish surname" receive less education, are more likely to live below the poverty level and are more likely to need public assistance than persons within the general population. Table IV

<sup>20</sup>The percentage of persons of Spanish language or Spanish surnames whose mother tongue is Spanish was derived by dividing the total population of persons of Spanish language or Spanish surname provided in Table 107, of the Census Report, into the total population which speaks Spanish as its mother tongue, provided in Table 102.

<sup>21</sup>U.S. Dept. of Commerce Report, United States Census of Population 1970, General Social and Economic Characteristics, California Table 113 (1972).

<sup>22</sup>*Id.*

<sup>23</sup>*Id.* at Table 116.

<sup>24</sup>*Id.*

<sup>25</sup>*Id.*

clearly demonstrates that the significant factor which results in the disparity between "persons of Spanish language or Spanish surname" and the general population is Spanish as a mother tongue. In Palos Verdes Peninsula, where only five percent of the Spanish surnamed population speaks Spanish as their mother tongue, the average family income is \$18,103. In Calerico, where 97 percent of the Spanish surnamed population speaks Spanish as their mother tongue, the average family income is \$6,440. Throughout the table, the close correlation between the percent of Spanish surnamed persons who speak Spanish as their mother tongue and their family income is evident.

This close correlation is seen in each of the education and economic characteristics listed. In San Carlos, where only 3 percent of the Spanish surnamed persons speak Spanish as their mother tongue, 78 percent of the Spanish surnamed persons graduate from high school and their median educational level is 12.8 years. In Willowbrook, where 89 percent of the Spanish surnamed speak Spanish as their mother tongue, only 17 percent graduate from high school and the median educational level is 7.9 years. In Brawley, where 91 percent of the Spanish surnamed persons speak Spanish as their mother tongue, the percentage of Spanish surnamed families which receive public assistance is (24.9) seven times that of the Spanish surnamed families in Alamo-Danville (3.6%), where only 27.5% of the Spanish surnamed persons speak Spanish as their mother tongue. In Madera, where 87% of the



Spanish surnamed population speak Spanish as their mother tongue, the percentage of families living below the poverty level is (29.3%) six times that of Carmichael (4.8%), where only 37% of the Spanish surnamed persons speak Spanish as their mother tongue.

Table IV makes abundantly clear that a Spanish surnamed person's chances of obtaining an education sufficient to provide him with the opportunity to achieve economic independence depends to a significant extent upon whether his mother tongue is English or Spanish. Fortunately, the fact that a child's mother tongue is Spanish does not mean that he cannot learn English. However, since Spanish is spoken in his home, if he is to learn English, it must occur in school.<sup>26</sup> When he is placed in a classroom where only English is spoken, he may eventually pick up a few words, but will in the meantime fall far behind his English-

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<sup>26</sup>Since the number of Spanish speaking children attending school in California and the Southwest is great, the question of additional cost to provide them with an education is perhaps relevant. In fiscal year 1969, the Department of Health, Education and Welfare expended \$4,986,056 for bilingual programs attended by 18,677 children, or, an average of \$267 per child. U.S. Comm. on Civil Rights Report, *The Excluded Student*, p. 23 (1972). This sum represents expenditures for teachers, teacher training, and materials. To determine the additional cost to educate a child in a bilingual program, the amount which would have been spent on the child to educate him in a regular class must be deducted from the cost to educate him in the bilingual class. Since a bilingual teacher and bilingual materials should cost the district no more than a monolingual teacher and monolingual materials, the difference in cost should be limited to teacher training. In light of the cost to society resulting from the inability of Spanish speaking persons to obtain an education, the failure of school districts to provide Spanish speaking children with bilingual education is irrational.



speaking classmates,<sup>27</sup> will likely be placed in a class for the mentally retarded,<sup>28</sup> and the chances that he will drop out of school before graduating are high.<sup>29</sup>

The only means by which approximately 83,000 monolingual Spanish speaking children in California's public schools can obtain an education and thereby move into the mainstream of American life, free of poverty and the need for public assistance, is to be taught English. Whether this is done in bilingual classes, English as a second language classes, through the use of teacher aides or other persons, is not a problem with which this Court need be concerned. On the other hand, to compel a monolingual Spanish

<sup>27</sup>That this is occurring is clear from a comparison of Anglo and Mexican American children's reading achievement, grade repetitions, and numbers of average children in the schools. In May 1972, the United States Commission on Civil Rights reported that in California, 52 percent of the Mexican American fourth grade children read below grade level, compared to 27 percent for Anglo children. By the time these children graduate from high school, 63 percent of the Mexican American children read below grade level. Nearly 22 percent are reading at the ninth grade level or lower. The Commission points out that the problem is heightened by the fact that an estimated 36 percent of the Mexican American children have dropped out of school before reaching the 12th grade, U.S. COMMISSION ON CIVIL RIGHTS REPORT, THE UNFINISHED EDUCATION, p. 27-28 (1971). The Commission also reported that in the Southwest, 15.9 percent of the Mexican American students repeat the first grade, compared with six percent for Anglo students. In California, the figures are 9.8 percent and 5.6 percent, respectively. *Id.* at p. 35. The Commission found that by grade one, 3.9 percent of the Mexican American students are two or more years below average, compared with .8 percent of the Anglo students. By grade eight, 9.4 percent of the Mexican American students are two or more years below average, compared with 1.2 percent of the Anglo students. *Id.* at p. 35.

<sup>28</sup>See Complaint, exhibits and stipulated order in *Diana v. State Board of Education*, Civil No. C-70 34 RFP (N.D. Cal. 1970).

<sup>29</sup>See U.S. COMMISSION ON CIVIL RIGHTS REPORT, THE UNFINISHED EDUCATION, pp. 12-14 (1971).

speaking child to sit all day, every day, in a class being taught solely in English, is to impose upon him a life sentence of poverty for the crime of being unable to speak English.

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**CONCLUSION**

For the above stated reasons, the judgment below should be reversed.

Dated, July 20, 1973.

Respectfully submitted,

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